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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,451	02/01/2001	Howard Lynn Lincecum	9592.003	8184
33222	7590	05/30/2006	EXAMINER	
JONES, WALKER, WAECHTER, POITEVENT, CARRERE & DENEGRE, L.L.P. 5TH FLOOR, FOUR UNITED PLAZA 8555 UNITED PLAZA BOULEVARD BATON ROUGE, LA 70809			AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/775,451	<b>Applicant(s)</b> LINCECUM, HOWARD LYNN	
	<b>Examiner</b> Walter B. Aughenbaugh	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6-8,11,18 and 19 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-8,11,18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. The 35 U.S.C. 103 rejections of claims 1-4, 6-8, 11, 18 and 19 that were repeated in the Advisory Action mailed September 30, 2003 have been withdrawn due to the reversal of these rejections by the Board of Patent Appeals and Interferences in the Decision mailed February 27, 2006.
2. The finality of the previous Office Action mailed March 31, 2003 has been vacated.
3. The prosecution of application serial number 09/775,451 has been reopened.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6, 7 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Akao (U.S. Patent No. 4,876,129).

In regard to claim 1, Akao teaches a bag (col. 9, lines 1-5) formed of a dual surface material wherein the dual surface material comprises an inside surface having a coefficient of friction range of 0.12 to 0.37, a range that overlaps with the claimed range of approximately 0.125 to 0.275, and an outside surface having a coefficient of friction of 0.19 or more and which is greater than that of the inner surface by 0.05 or more, a teaching which encompasses the claimed range of approximately 0.300 to 0.600 (col. 2, lines 33-44 and col. 12, lines 34-48).

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In regard to claim 2, the dual surface material of Akao is plastic since it is linear low density polyethylene and a thermoplastic resin (col. 2, lines 33-44) such as linear low density polyethylene (col. 5, lines 35-38).

In regard to claim 3, the dual surface material of Akao is a polymer since it is linear low density polyethylene and a thermoplastic resin (col. 2, lines 33-44) such as linear low density polyethylene (col. 5, lines 35-38).

In regard to claim 4, the dual surface material of Akao is a polyethylene material since it is linear low density polyethylene and a thermoplastic resin (col. 2, lines 33-44) such as linear low density polyethylene (col. 5, lines 35-38).

In regard to claim 6, the dual surface material of Akao has an inside surface having a coefficient of friction range of 0.12 to 0.37, a range that overlaps with the claimed range of approximately 0.175 to 0.250, and an outside surface having a coefficient of friction of 0.19 or more and which is greater than that of the inner surface by 0.05 or more, a teaching which encompasses the claimed range of approximately 0.350 to 0.600 (col. 2, lines 33-44 and col. 12, lines 34-48).

In regard to claim 7, Akao teaches that the bag comprises three layers (col. 7, lines 11-12).

In regard to claim 18, Akao teaches a bag (col. 9, lines 1-5) formed of a dual surface material wherein the dual surface material comprises an inner polymer film layer having a coefficient of friction range of 0.12 to 0.37 and an outer polymer film layer having a coefficient of friction of 0.19 or more and which is greater than that of the inner surface by 0.05 or more, a teaching which encompasses the claimed range of approximately 0.300 to 0.600 (col. 2, lines 33-

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44 and col. 12, lines 34-48). The coefficient of friction of the inner polymer film layer of Akao is less than that of the outer polymer film layer of Akao since Akao teaches that the coefficient of friction of the outer polymer film layer is greater than that of the inner surface by 0.05 or more (col. 2, lines 33-44 and col. 12, lines 34-48).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akao (U.S. Patent No. 4,876,129) in view of Matsunaga et al. (U.S. Patent No. 5,609,930).

In regard to claim 8, Akao teaches the bag as discussed above in regard to claim 7. Furthermore, the dual surface material of Akao has an inside surface having a coefficient of friction range of 0.12 to 0.37, a range that overlaps with the claimed range of approximately 0.175 to 0.250, and an outside surface having a coefficient of friction of 0.19 or more and which is greater than that of the inner surface by 0.05 or more, a teaching which encompasses the

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claimed range of approximately 0.350 to 0.600 (col. 2, lines 33-44 and col. 12, lines 34-48).

Akao teaches that the intermediate layer is selected from the resins taught as suitable for the outer layer (col. 7, lines 11-16) such as linear low density polyethylene (col. 5, lines 35-38) and that the linear low density polyethylene layers should have superior impact puncture strength (col. 3, lines 17-22).

Akao fails to explicitly teach that the intermediate layer has a Dart Impact strength of approximately 95 grams per mil.

Matsunaga et al. teach a bag with three polyethylene layers (col. 2, lines 50-57) and that a bag of excellent strength is obtained when a linear low-density polyethylene having a Dart Impact strength of not smaller than 100 grams per 30 $\mu$ m is used as the inner layer (col. 5, lines 36-40 and col. 4, lines 32-47). 100 grams per 30 $\mu$ m is equivalent to 83 grams per mil (since 1mil=25 $\mu$ m). One of ordinary skill in the art would have recognized to have used the linear low-density polyethylene of Matsunaga et al. with a Dart impact strength of not smaller than 83 grams per mil, including about 95 grams per mil, as the middle layer of the bag of Akao in order to impart excellent impact resistance to the bag and thus to provide a bag of excellent strength as taught by Matsunaga et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the linear low-density polyethylene of Matsunaga et al. with a Dart impact strength of not smaller than 83 grams per mil, including about 95 grams per mil, as the middle layer of the bag of Akao in order to impart excellent impact resistance to the bag and thus to provide a bag of excellent strength as taught by Matsunaga et al.

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In regard to claim 19, Akao teaches the bag as discussed above in regard to claim 18. In regard to claim 7, Akao teaches that the bag comprises three layers where the intermediate layer (which corresponds to the claimed middle polymer film layer) is selected from the resins taught as suitable for the outer layer (col. 7, lines 11-16) such as linear low density polyethylene (col. 5, lines 35-38) and that the linear low density polyethylene layers should have superior impact puncture strength (col. 3, lines 17-22).

Akao fails to explicitly teach that the middle polymer film layer has a Dart Impact strength of between approximately 70 and 200 grams per mil.

Matsunaga et al. teach a bag with three polyethylene layers (col. 2, lines 50-57) and that a bag of excellent strength is obtained when a linear low-density polyethylene having a Dart Impact strength of not smaller than 100 grams per 30 $\mu$ m is used as the inner layer (col. 5, lines 36-40 and col. 4, lines 32-47). 100 grams per 30 $\mu$ m is equivalent to 83 grams per mil (since 1mil=25 $\mu$ m). One of ordinary skill in the art would have recognized to have used the linear low-density polyethylene of Matsunaga et al. with a Dart impact strength of not smaller than 83 grams per mil as the middle layer of the bag of Akao in order to impart excellent impact resistance to the bag and thus to provide a bag of excellent strength as taught by Matsunaga et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the linear low-density polyethylene of Matsunaga et al. with a Dart impact strength of not smaller than 83 grams per mil as the middle layer of the bag of Akao in order to impart excellent impact resistance to the bag and thus to provide a bag of excellent strength as taught by Matsunaga et al.

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8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Speckman (U.S. Patent No. 5,143,133) in view of Akao (U.S. Patent No. 4,876,129).

Speckman teaches an article of furniture covered with a multi-ply sheet of flexible material formed into a bag for covering furniture (col. 2, lines 38-40, col. 3, lines 3-30 and Fig.1). The innermost ply, which contacts the surface of the furniture, consists of a smooth surface to prevent rub damage to the furniture (col. 3, lines 10-14).

Speckman fails to explicitly teach that the multi-ply sheet of flexible material is a multi-ply sheet of plastic film and that the inner and outer surfaces of the multi-ply sheet have the claimed coefficient of friction ranges.

Akao, however, discloses a bag (col. 9, lines 1-5) formed of a dual surface material wherein the dual surface material comprises an inside surface having a coefficient of friction range of 0.12 to 0.37, a range that overlaps with the claimed range of approximately 0.125 to 0.275, and an outside surface having a coefficient of friction of 0.19 or more and which is greater than that of the inner surface by 0.05 or more, a teaching which encompasses the claimed range of approximately 0.300 to 0.600 (col. 2, lines 33-44 and col. 12, lines 34-48), where the coefficient of friction of the inner surface of 0.12 to 0.37 enables the contents of the package to be readily inserted in the package without damage while also preventing formations of scratches and abrasion marks formed on the surface of the contents after the contents have been inserted in the package (col. 5, lines 17-30). Therefore, one of ordinary skill in the art would have recognized to have used the dual surface material of Akao as the multi-ply sheet of flexible material of the bag of Speckman since the dual surface material of Akao enables the contents of the package to be readily inserted in the package without damage while also preventing



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formations of scratches and abrasion marks formed on the surface of the contents (the rub damage discussed by Speckman) after the contents have been inserted in the package as taught by Akao.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the dual surface material of Akao as the multi-ply sheet of flexible material of the bag of Speckman since the dual surface material of Akao enables the contents of the package to be readily inserted in the package without damage while also preventing formations of scratches and abrasion marks formed on the surface of the contents (the rub damage discussed by Speckman) after the contents have been inserted in the package as taught by Akao.

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
05/22/06

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